

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 AMMIANUS POMPILIUS, also known as
4 ANTHONY PRENTICE,

5 Plaintiff

6 v.

7 JAMES DZURENDA,¹ et al.,

8 Defendants

Case No.: 2:18-cv-01801-APG-VCF

**Order Denying Motion for Preliminary
Injunction**

[ECF No. 15]

9 Plaintiff Ammianus Pompilius supplements his earlier motion for a preliminary
10 injunction regarding chapel access at High Desert State Prison (HDSP), where he is an inmate.
11 The parties are familiar with the facts, so I do not repeat them here except where relevant. The
12 defendants oppose Pompilius's motion for an injunction ordering chapel access for him. They
13 now present evidence that they had not presented in their original response to Pompilius's
14 motion.² They primarily argue that his religious beliefs are not sincerely held and that denying
15 him chapel access furthers a compelling governmental interest. I deny Pompilius's motion for
16 injunctive relief as to chapel access based on the fuller record now before me.

17 **I. ANALYSIS**

18 To qualify for a preliminary injunction, a plaintiff must demonstrate: (1) a likelihood of
19 success on the merits, (2) a likelihood of irreparable harm, (3) the balance of hardships favors the
20 plaintiff, and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*,

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22 ¹ The screening order dismissed the State of Nevada as a defendant. ECF No. 19. So the clerk is
directed to amend the caption accordingly.

23 ² Had the defendants responded substantively to Pompilius's motion the first time, there would
have been no need for me and the parties to expend time and resources on supplemental briefing.

1 555 U.S. 7, 20 (2008). Alternatively, under the sliding scale approach, the plaintiff must
2 demonstrate (1) serious questions on the merits, (2) a likelihood of irreparable harm, (3) the
3 balance of hardships tips sharply in the plaintiff’s favor, and (4) an injunction is in the public
4 interest. *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011). Where a party
5 seeks a mandatory injunction ordering the “responsible party to take action,” I must “deny such
6 relief unless the facts and law clearly favor the moving party.” *Garcia v. Google, Inc.*, 786 F.3d
7 733, 740 (9th Cir. 2015) (en banc) (quotation omitted).

8 Additionally, in the context of a civil action challenging prison conditions, injunctive
9 relief “must be narrowly drawn, extend no further than necessary to correct the harm the court
10 finds requires preliminary relief, and be the least intrusive means necessary to correct that harm.”
11 18 U.S.C. § 3626(a)(2). I must give “substantial weight to any adverse impact on public safety
12 or the operation of a criminal justice system caused by the preliminary relief and shall respect the
13 principles of comity set out” in § 3626(a)(1)(B). *Id.* A preliminary injunction is “an
14 extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear
15 showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)
16 (quotation and emphasis omitted).

17 The present motion for injunctive relief focuses on Pompilius’s claim that the defendants
18 violated the Religious Land Use and Institutionalized Persons Act (RLUIPA) by denying him
19 access to the prison chapel. Under RLUIPA, the government may not impose a substantial
20 burden on an inmate’s religious exercise unless that burden furthers a “compelling governmental
21 interest” and does so by “the least restrictive means.” 42 U.S.C. § 2000cc-1(a)(1)–(2). RLUIPA
22 must be “construed broadly in favor of protecting an inmate’s right to exercise his religious
23 beliefs.” *Warsoldier v. Woodford*, 418 F.3d 989, 995 (9th Cir. 2005) (citing 42 U.S.C. § 2000cc–

1 3(g)). “RLUIPA defines ‘religious exercise’ as ‘any exercise of religion, whether or not
2 compelled by, or central to, a system of religious belief.’” *Shakur v. Schriro*, 514 F.3d 878, 888
3 (9th Cir. 2008) (quoting § 2000cc–5(7)(A)). However, “a prisoner’s request for an
4 accommodation must be sincerely based on a religious belief and not some other motivation.”
5 *Holt v. Hobbs*, 574 U.S. 352, 360–61 (2015) (citation omitted).

6 The defendants first argue that Pompilius’s religious belief is not sincere. However, I
7 need not address that issue because assuming that his belief is sincere and his religious exercise
8 is substantially burdened, that burden furthers a compelling governmental interest by the least
9 restrictive means. In making this assessment, I ask “whether the government’s particular interest
10 in burdening this plaintiff’s particular religious exercise is justified in light of the record in this
11 case.” *Yellowbear v. Lampert*, 741 F.3d 48, 57 (10th Cir. 2014).

12 According to the defendants, denying Pompilius chapel access serves the compelling
13 interest of maintaining security and order in the prison. Prison security is a compelling
14 governmental interest. *Warsoldier*, 418 F.3d at 999 (citation omitted). The defendants point to
15 the declarations of defendant Chaplain Calderin and Associate Warden Jennifer Nash to support
16 their argument.

17 First, the defendants contend that Pompilius wants to access the chapel side room “as a
18 cover to engage in illicit sexual activity.” ECF No. 79 at 14-15. Calderin explains that there are
19 sheds next to the outdoor worship grounds currently used by Pompilius, and Calderin believes
20 “the sheds might be used by inmates for the purpose of engaging in sexual activity that is out-of-
21 sight of prison guards.” ECF No. 79-3 at 5. He began to suspect this when inmates, including
22 Pompilius, frequently asked him to leave the sheds open. *Id.* Calderin sees no need for the sheds
23 to remain unlocked. *Id.* He reported his concerns to an associate warden, and she ordered him to

1 permanently keep the sheds locked. *Id.* He states that Pompilius and other inmates continued to
2 ask him to unlock the sheds. *Id.*

3 Second, Calderin believes Pompilius wants to use the chapel side room because it is
4 unsupervised and “cannot be seen into directly,” whereas the worship grounds where Pompilius
5 currently practices have more traffic and are visible to a tower manned at all hours. *Id.* at 5-6.
6 Associate Warden Nash states that “[a]ny illicit activity outside and in the Earth-based worship
7 area would be noticed by” nearby prison staff. ECF No. 79-7 at 4.

8 Third, Calderin describes an incident from 2018 in which Pompilius was accused of
9 defacing chapel property with pentagrams. He states that Pompilius and other inmates were
10 allowed to use a chapel side room because of bad weather. ECF No. 79-3 at 4. According to
11 Calderin, when he checked on the room Pompilius’s group was in, he saw that the lights were off
12 and the group was “performing some kind of ritual headed by” Pompilius. *Id.* Calderin states
13 that a pentagram was drawn on the floor and on the TV. *Id.* He believes that when such symbols
14 are drawn on the chapel space, that may cause “grave offense” to other religious groups that use
15 the room and it “has the potential to spark a violent incident.” *Id.* Calderin contests Pompilius’s
16 argument that pentagrams are routinely drawn during his group’s weekly prayer, stating that
17 pentagrams are not drawn when Pompilius’s group worships outside. *Id.* Nash states in her
18 declaration that she believes “defacing chapel property with a pentagram/pagan symbols could
19 potentially incite other inmates to violence and/or cause tension between different faith-groups.”
20 ECF No. 79-7 at 3.

21 The defendants have provided sufficient evidence to show the compelling governmental
22 interest in maintaining security and order. They further argue that allowing Pompilius to use a
23 plot of land near the chapel is the least restrictive means of furthering the compelling

1 governmental interest. Pompilius contends that alternatives include posting an officer at the
2 chapel during chapel times and limiting his group to the chapel room with a camera and
3 windows. However, Associate Warden Nash states that constant supervision of the chapel side
4 rooms is not possible because of low levels of staffing and budgetary limitations. ECF No. 79-7
5 at 4. And there is a factual dispute as to whether there is a chapel room that can feasibly be
6 monitored in some way, and whether sending an officer to the room once a concern arises would
7 still further the compelling governmental interest. On the record before me at this stage,
8 allowing Pompilius to use the outdoor worship grounds appears to be the least restrictive means.

9 In Pompilius's declaration, he disputes all of the defendants' assertions, insisting that
10 they are false. Another inmate also maintains in his declaration that the defendants' assertions
11 are false. But when a party seeks a mandatory injunction ordering the "responsible party to take
12 action," I must "deny such relief unless the facts and law clearly favor the moving party." *Garcia*
13 *v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (en banc) (quotation omitted). Given the
14 defendants' newly presented evidence, the facts and law do not clearly favor Pompilius. He is
15 not likely to succeed on the merits. Without an RLUIPA violation, the other factors for
16 injunctive relief also do not warrant granting his motion. Accordingly, I deny Pompilius's
17 motion for a preliminary injunction as to chapel access.

18 **II. CONCLUSION**

19 I THEREFORE ORDER that plaintiff Ammianus Pompilius's motion for preliminary
20 injunction **(ECF No. 15) is denied.**

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1 I FURTHER ORDER the clerk of the court to amend the caption of this case to remove
2 the State of Nevada from the case caption.

3 DATED this 2nd day of August, 2021.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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